

**Before The Federal Maritime Commission
Washington, DC.**

**Docket # 16-05
RIN: 3072 – AC53**

**GLOBAL MARITIME TRANSPORTATION SERVICES, INC.
RESPONSE TO SOLICITATION OF VIEWS ON REQUESTS TO
SERVICE CONTRACTS AND NVOCC SERVICE
ARRANGEMENTS**

INTRODUCTION

My name is Edward J. Le Blanc and I am an FMC Practitioner and Chief Executive Officer of Global Maritime Transportation Services, Inc. (GMTS), with offices in both Vermont and Florida. GMTS specializes in ocean transport services, including publishing and management of tariffs, service contracts and NVOCC service agreements (NSA's), on behalf of both the VOCC and NVOCC community, all contained within the current regulatory environment. GMTS also maintains both software and public website access under its trademark *BOTE™ (including BOTE RATES™) AND EZTARIFF™* to assist in its role as publisher. Since March 1, 2015 GMTS and its' customers have filed over 1.3 million tariff and service contract / NSA filings and amendments within our Bote Rates™ system. We

currently represent approximately 275 clients and therefore wish to offer some insight from our perspective on the issues being considered on the matter of service contracts and NVOCC service arrangements.

COMMENTS

We are concerned that only a 30-day comment period was provided and therefore did not permit us as a supplier of service to poll our customers regarding these specific filing issues and so we offer these comments based solely on our general discussions with our clients.

While we greatly appreciate the need to improve processes and reduce cost we also believe that the public record is extremely important and are concerned that some of these changes may dilute or delay data collection to that public record.

We also suggest that in proposing changes to the rule making process it would be helpful to have on hand the specific wording which would be anticipated should these changes occur in order to fully understand the impact of the changes being proposed such as in Sections 530.5 and 530.13.

It is with this in mind that we offer our comments.

In order to ensure that we consider all of the Commissions' changes we will respond to the issues in the order presented in the Docket.

Part 530 – Service Contracts

Subpart A – General Provisions

Section 530.3 Definitions

530.3 Affiliate: At first blush this proposal of adopting the definition of NSA's for Service Contracts would seem to be fairly straight forward, however, we have several concerns, which go unaddressed in the docket.

- 1) Would existing contracts which don't comply with the new regulation be grandfathered in so that they remain compliant?

Furthermore, what would happen if these contracts were extended continually for several years? Is there a time limit to which they may be extended?
- 2) If the definition of Affiliate is now included, then why not further include the definition of an association which is in the CFR 46 Section 401.02 but not repeated in 530.3 in order to ensure that all elements of the contracting parties are each specifically defined.
- 3) Is there a need to specifically address contracts, which may be in force today, that are between multiple NVOCC's and a VOCC but are not affiliated using the definition proposed in the outline and not part of an association?

530.3 (i) Effective Date: The effective date coinciding with or before the effective date ensures that the checks and balances of the full compliance of the tariffs, contract and amendments are determined prior to their submission. Should the proposed change to amendments be permitted, it could be possible that sizeable shipments of cargo are moved prior to the determination of the amendment being fully compliant. An instance where this could occur is the verification of the good standing of an NVOCC or Affiliate both involving proposed changes to rulemaking in the same docket. Should an NVOCC license be revoked and the carrier only fulfills the check before uploading the amendment of an extension, it is very conceivable that the carrier could unwittingly move cargo under a contract no longer compliant. The current regulations compliment the requirement to verify prior to the effective date of the amendments and actively accepting cargo.

Section 530.5 Duty to File: We have no objection to the Commission making carriers aware of the availability of the automated web services process but if the Commission has already “encouraged the use of web services to carriers over the years” and anticipates that “92.6% of contracts and amendments filed by April 1, 2016” should be filed using web services then why would it be necessary to change

the regulations? Is it the intent of the revised regulations to make use of the web services process mandatory? What is the wording of the proposed revision?

Section 530.6 Certification of Shipper Status: We would support the implementation of all 3 proposals as offered in this section however, we would want the rulemaking to also outline the consequences of a failed upload for instance:

- a) What happens to a contract, which has multiple NVOCC's, but only one gets rejected? Does it void the filing of the entire contract or simply remove the ability of the one NVOCC from moving cargo under that contract?
- b) In the case of multiple NVOCC contracts will it outline the details of which NVOCC is non compliant or will it be up to the filer to then determine the rejected party?
- c) Would it be possible for the FMC to issue a "push" list generated daily by either the Servcon or other processes which would allow upload to a filer's system on a daily basis in order for the filer system to pre identify any non compliant parties?

d) We would not support the proposal in the event the Commission changes its rulemaking on the effective date question concerning contracts or amendments given our previous concerns.

Subpart B – Filing Requirements

Section 530.8 Service Contracts: We would suggest that a more effective administration of the contract process and also allowing of electronic acceptance of amendments to the contract could alleviate many of the issues outlined. In essence, a contract could be accepted via email and uploaded and filed within minutes using the web service process currently in place. We would encourage rule making by the FMC that would specifically allow for electronic acceptance of an amendment, as is the case with NRA's. We are concerned that by allowing filings to take place after the effective date it undermines the public record process and obscures activity. We are also concerned that relaxing this requirement does not address issues, which would come to light especially if the FMC adopts the suggestion of including the NVOCC registration number into the filing of contracts.

Section 530.10 Amendment, Correction, Cancellation and Electronic Transmission Errors.

- a) 30 Day Grace Period: We believe that a provision for correcting contracts should replicate the ability to correct a tariff and that the conditions for both should be essentially the same.
- b) Electronic Transmission Errors: We would support the extending of the time from 48 hours to 30 days.
- c) Extending Filing Period for Correction Requests to 180 days: We would support the changes as proposed.
- d) Extend the Service Contract Procedure to Include Unfiled Contracts or Amendments: We would support this effort but only if the affidavits process is maintained in order to establish a verifiable error was clerical or systems but not intentional.
- e) Eliminate Carrier Affidavit and Significantly Reduce Filing Fee: We believe that it would be appropriate to provide a lessening of the fee but would continue to support the affidavit requirement so that the Commission would have less background work to perform but still ensure that the appropriate documentation is in place.

Subpart C – Publication of Essential Terms

Section 530.12 Publication: We would not support any changes to the current essential terms filing requirement and suggest that this detail still provides critical detail for volume and commodity

information and fills both a commercial and compliance need that would otherwise be a diminishing of the public record.

Subpart D – Exceptions and Implementation

530.13(a) Statutory Exceptions: From our reading of previous submissions we understand the commission is contemplating expanding this list to include:

Agri products including (Grain, Soybeans, Meal, Flour, Corn Products, Animal Feed, Seeds, Food Additives)

Clay

Plastic Scrap

Hay

Hides

We are concerned that introduction of additional commodities to the exempt commodity list would make it difficult if not impossible to produce a relevant index on these commodities. In our experience some of the products listed tend to be seasonal, are contracted yearly but with limited number of changes and do not create a large number of amendments. We reviewed hundreds of contract filings within our system to determine the number of amendments issued as they relate to the above list of products and

all evidence suggests that products such as seed or soybean if singular to the contract filing resulted in very few contract amendments. If however, the items were coupled with chemicals, gds or beans peas and lentils descriptions as an example they resulted in a significant number of contract amendments.

530.14 Implementation: For the reasons given in the previous sections we would not support the 30 days filing notice to the implementation section.

PART 531 – NVOCC Service Arrangements

Subpart A – General provisions.

Subpart B – Filing Requirements.

Subpart C – Publications of Essential Terms.

Subpart D – Exceptions and Implementation.

Our comments regarding 531.1, 531.3, 531.3 (k), 531.5, 531.6, 531.6 (d), 531.6 (d)(5), 531.8, 531.9, 531.10 and 531.11 are similar to our comments under the same headings for service contracts.

CONCLUSION

While we wholeheartedly support the effort to reduce cost and time and allow a more lenient time frame for correcting clerical or system errors we do not believe that these changes should be at the expense of the public

record. We are also inclined towards caution regarding some of the proposed changes without having the detail of those changes expressed in the docket.

We are concerned with both the idea of monthly filing of contract amendments and the expansion of the exempted commodity list and its impact on reliant analysis should these commodities be removed from the reporting process. We hope these comments prove helpful and would be available for further discussion if any of our comments require further explanation.